



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,988	12/22/2003	Joshua M. Kopelman	2043.047US2	9050
49845	7590	02/01/2010		
SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER SHEIKH, ASFAND M	
			ART UNIT 3627	PAPER NUMBER
			NOTIFICATION DATE 02/01/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
request@slwip.com

Office Action Summary

Application No.

10/743,988

Applicant(s)

KOPELMAN ET AL.

Examiner

Asfand M. Sheikh

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date 10/28/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/2009 has been entered.

Response to Arguments

Applicant's arguments with respect to claim 1, 16, and 18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-19, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nahan et al. (US 5,664,111) in view of Stack (US 6,076,070) and Examiner's Official Notice.

Claim 1 and 3-19 and 26 and 27

[claims 1, 16, 18] Nahan discloses a method for pricing goods offered for sale by independent sellers, the method being computer implemented by a marketer controller capable of communicating via a communications network, the marketer controller including a CPU and a memory operatively connected to the CPU, the method comprising the marketer controller (see at least, abstract and col. 13, lines 13-28): receiving data from an independent seller, via the communications network, the data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at a fixed price to be determined by the marketer controller as a function of another party's price for a comparable good, in accordance with a predetermined method (see at least, col. 2, lines 38-59 and col. 13, lines 38-49: the examiner notes the listing data becomes permanent) and **[claim 26 and**

27] wherein the predetermined pricing method to be used is set by the marketer controller/independent seller (see col. 13, lines 13-28)

Nahan fails to disclose querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good, said querying comprising the marketer controller transmitting a query, via the communications network, to a vendor's controller that is configured for electronic communication via the communication network and that includes a respective CPU and respective memory operatively connected to the respective CPU, said query identifying said good and requesting transmission to the marketer controller of the vendor's price for the comparable good (e.g. another parties price based on a predetermined method); receiving, via the communications network the vendors price for the comparable good; and establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived, **independent of a sale price suggested by the seller**, by a predetermined method using as input the received vendor's price for the comparable good

Stack discloses querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good, said querying comprising the transmitting a query, via the communications network, to a vendor's controller that is configured for electronic communication via the communication network and that includes a respective CPU and respective memory operatively connected to the respective CPU, said query identifying said good and requesting transmission of the

vendor's price for the comparable good (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33); receiving, via the communications network the vendors price for the comparable good (see at least, col. 3, lines 57-61); and establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by a predetermined method using as input the received vendor's price for the comparable good (see at least, col. 3, lines 45-col. 4, line 15).

Further Stack discloses **[claims 3 and 19]** wherein the seller agrees, before the sale, to sell the good at a sale price determined by the marketer proximate a time of sale of the good to the buyer, the sale price being determined in accordance with the predetermined method (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and **[claim 4]** wherein using a predetermined method to derive the sale price comprises equating an index price to the vendor's price of the comparable good (see at least, col. 3, lines 40-43: the examiner notes if the "competitor's price is lower" to be a an index price) and **[claims 5, 8, and 9]** wherein the seller's good is used and has a certain universal product code (UPC) or International Standard Book Number (ISBN) code, and the comparable good is new and has an identical UPC or ISBN (see at least, col. 4, lines 35-39) and **[claim 6]** wherein the querying is performed responsive to the receiving of the identifying data (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and **[claims 7 and 17]** wherein the predetermined method for deriving the sale price of the independent seller's good is set by the marketeer controller (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and

[claims 10 and 11 and 25] wherein the predetermined method comprises discounting the index price for the comparable good to determine the sale price for the independent seller's good (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33) and further with respect to [claim 11] the examiner notes that discounting based on the index price is a matter of design choice and can be set by any parameter used for calculating a discount (e.g. 10% the difference of the competitor price based on a price match) and [claim 12] wherein the querying is performed responsive to receiving from a buyer, via the communications network, an expression of interest in purchasing the good (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33 and col. 4, lines 35-39) and **[claims 13-15 and 22-23]** wherein the expression of interest is a standard identification code identifying the good and wherein the standard identification code comprises a universal product code (UPC) or International Standard Book Number (ISBN) (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33 and col. 4, lines 35-39)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan to include querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good; and deriving a sale price for the good from the vendor's price using a predetermined method as taught by Stack. One of ordinary skill in the art would have been motivated to combine the teachings in order to assure a customer that they are getting the best price available for goods and/or services ordered through the network (see at least, Stack, col. 2, lines 27-31).

Nahan in view of Stack fail to disclose establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived, **independent of a sale price suggested by the seller**, by a predetermined method using as input the received vendor's price for the comparable good

The examiner takes Official Notice that it is old and well known in the selling arts to derive a sales price that is independent of a price suggested by a seller (e.g. hiring another party to facilitate the sales of goods: example 1: liquidation of goods (i.e. company going out of business hires a individuals to sell goods at prices that are not determined by the company) and example 2: selling of stocks (e.g. broker does not consult consumer).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan and Stack's sales price threshold set by the seller to instead include the sale price derived, **independent of a sale price suggested by the seller** as taught by the Examiner's Official Notice. One of ordinary skill in the art would have been motivated to combine the teachings in order to allow a scheme in which a seller can sell goods while being minimally involved.

Claim 2 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nahan et al. (US 5,664,111) in view of Stack (US 6,076,070) and Examiner's Official Notice as applied to claim 1 above, and further in view of Woolston (US 6,202,051 B1)

Claim 2 and 21-25

Nahan in view of Stack and Examiner's Official Notice disclose the claimed invention as noted above with respect to claim 1, however fails to disclose presenting the good in a marketplace as an item for sale at an unidentified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price (e.g apart from any price for the good) and adding the good to a list of goods registered for sale, the good being listed for sale at an unspecified price.

Woolston discloses presenting the good in a marketplace as an item for sale at an unidentified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price (e.g apart from any price for the good) and adding the good to a list of goods registered for sale, the good being listed for sale at an unspecified pri (see at least, abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan in view of Stack and Examiner's Official Notice to include presenting the good in a marketplace as an item for sale at an

unidentified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price (e.g. apart from any price for the good) and adding the good to a list of goods registered for sale, the good being listed for sale at an unspecified price as taught by Woolston. One of ordinary skill in the art would have been motivated to combine the teachings in order to allow users to speculate on the price of collectable or used goods in an electronic market place (see at least, Woolston, col. 2, lines 3-8).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nahan et al. (US 5,664,111) in view of Stack (US 6,076,070) and Examiner's Official Notice as applied to claim 1 above, and further in view of Reuhl et al. (US 5,873,069)

Claim 20

Nahan in view of Stack and Examiner's Official Notice fails to disclose wherein the querying is performed proximate a time that the independent seller registers the good with the marketer as a good offered for sale by the seller.

Reuhl discloses wherein the querying is performed proximate a time that the independent seller registers the good with the marketer as a good offered for sale by the seller (see at least, col. 3, lines 40-57: the examiner notes when an item would be added it would be compared to the market and priced accordingly).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan in view of Stack and Examiner's

Official Notice to include wherein the querying is performed proximate a time that the independent seller registers the good with the marketer as a good offered for sale by the seller as taught by Reuhl. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide a comparison among competitors on the product of interest or a substantially similar competitor product (see at least, Reuhl, col. 1, lines 30-38).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand M. Sheikh/
Examiner, Art Unit 3627
1/16/2010

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627